

ISSUE DATE: August 1, 1995

DOCKET NO. E-015/GR-94-001

ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Joel Jacobs
Marshall Johnson
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Minnesota
Power for Authority to Change Its Schedule of
Rates for Retail Electric Service in the State of
Minnesota

ISSUE DATE: August 1, 1995

DOCKET NO. E-015/GR-94-001

ORDER DENYING RECONSIDERATION

PROCEDURAL HISTORY

On May 31, 1995 the Commission issued its ORDER SETTING FINAL RATES, REQUIRING REFUND, AND REQUIRING REPORT in this rate case. That Order approved new rate schedules effective June 1, 1995 and required the Company to refund the difference between amounts collected during the interim rate period and amounts collectable under the new rate schedules.

On June 20, 1995 the Large Power Intervenors filed a petition for rehearing and reconsideration, claiming the May 31 Order was contrary to law and arbitrary and capricious for failing to make new rates effective on November 22, 1994, the date of the original Order on the merits. On June 30, 1995 the Department of Public Service and the Residential Utilities Division of the Office of the Attorney General filed responses urging denial of the petition.

The Company took no position on the merits of the petition. It did, however, file a response notifying the Commission and all parties that it would probably seek a stay of its refund obligation should the Large Power Intervenors seek judicial review of the May 31 Order.

On July 7, 1995 the Commission issued an Order granting the reconsideration petition for purposes of tolling the 20-day statutory deadline for Commission action. Minn. Stat. § 216B.27, subd. 4. The merits of the petition came before the Commission on July 20, 1995.

FINDINGS AND CONCLUSIONS

I. Issues Summary

The Large Power Intervenors reiterated their claim that Minn. Stat. § 216B.16, subd. 3 requires new rate schedules to take effect on the date of the original Order on the merits. The May 31 Order rejected this claim, in part because two statutory provisions authorize a later effective date in cases in which reconsideration is requested. (Minn. Stat. § 216B.27, subd. 3, providing that no Commission Order can take effect while a petition for reconsideration is pending; and Minn. Stat. § 216B.16, subd. 2, authorizing the Commission to “further suspend” proposed rates in general rate cases until all petitions for rehearing have been decided.)

The Large Power Intervenors argued the Commission’s authority to set an effective date for new rates could not rest on these provisions, since they apply only when reconsideration petitions are filed.

The Large Power Intervenors also claimed that, even if the Commission had the authority to set an effective date other than the date of the original Order on the merits, its reasons for setting the date in this case were arbitrary and capricious.

II. Commission Action

A. The Law Does Not Require New Rates to Become Effective on the Date of the Original Order on the Merits

The Commission has re-examined the arguments of the Large Power Intervenors and continues to reject the claim that new rates must take effect on the date of the original Order on the merits. The Commission rejects the claim not just because of the two statutory provisions cited above, but, as the May 31 Order explained, because it is inconsistent with the statutory framework as a whole.

It is important to note that the statute anticipates a hiatus between the original Order on the merits and the effective date of new rates, not just in cases involving reconsideration, but in general. For example, when explaining how utilities may recover any deficiency between amounts collected under interim rates and amounts collectable under new rate schedules, the statute limits recovery to the period between “the date of the final determination [the original Order on the merits] and the date the new rate schedules are put into effect. . . .”

Minn. Stat. § 216B.16, subd. 3.¹ This provision clearly assumes that the date of the original Order on the merits and the date the new rate schedules take effect are or can be two different dates.

At oral argument the Large Power Intervenors argued that only in “shortfall” cases (cases in which the utility undercollects during the interim rate period) can new rate schedules go into effect later than the date of the original Order on the merits. The Commission fails to see how this interpretation meets basic standards of fairness or serves any reasonable public policy goal. This interpretation would lead to the absurd result that utilities in the greatest need -- those undercollecting under interim rates -- would have to wait longer for rate relief than utilities in no need -- those overcollecting. The Commission rejects the claim that different effective dates apply depending upon whether a utility is undercollecting or overcollecting under interim rates.

Finally, the Large Power Intervenors argued that the Commission appeared to recognize no limits on its discretion in setting the effective date of new rate schedules. Obviously, the Commission recognizes that new rate schedules cannot go into effect before the original Order on the merits, as the Supreme Court has explained², and that they must go into effect in time for the utility to make interim rates refunds within 120 days of the final Order not subject to rehearing or appeal.³

B. The June 1 Effective Date is Not Arbitrary and Capricious

The Large Power Intervenors also claimed that, even if the Commission had the discretion to make new rates effective on a date other than the date of the original Order on the merits, it acted arbitrarily and capriciously in choosing June 1. The Commission disagrees.

The June 1 date is consistent with Commission precedent and reflects its considered judgment on the facts of this case. The Commission continues to believe, for the reasons detailed in the May 31 Order, that putting new rate schedules into effect on the date of the original Order on the merits, or on the January 1 date proposed by the Company, would contravene the public interest.

¹The statute also allows recovery of the deficiency for the length of time of any time extension granted to accommodate settlement discussions.

²See, In re People’s Natural Gas Company, 389 N.W.2d 903 (Minn. 1986).

³Minn. Stat. § 216B.16, subd. 3.

C. Petition Denied

The Commission rejects the claim that new rate structures must go into effect on the date of the original Order on the merits and finds that the public interest supports and requires an effective date of June 1, 1995. The Large Power Intervenors' petition for rehearing and reconsideration will be denied.

ORDER

1. The petition for rehearing and reconsideration filed by the Large Power Intervenors is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)